

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Larry Liner v. Workers Temporary Staffing, Inc.

SC07-1470

ALL RISE.
GOOD MORNING.
MORNING.
COURT IS BACK IN SESSION.
PLEASE BE SEATED.
THE NEXT CASE ON OUR
CALENDAR THIS MORNING IS LINER
VERSUS WORKERS TEMPORARY
STAFFING, INC.
MR. CRABTREE, READY TO PROCEED?
MAY IT PLEASE THE COURT.
THERE ARE TWO CORE PROBLEMS
WITH THE ANALYSIS IN THE TRIAL
COURT AND IN THE FOURTH DCA THE
FIRST IS THAT THEY ENGAGED IN A
MACRO ANALYSIS, --
THINK YOU NEED TO INTRODUCE
YOURSELF.
I'M JOHN CRABTREE.
WHO YOU REPRESENT AND
WE ARE RECORDING AND ON VIDEO.
IT'S ALWAYS HELPFUL IF WE HAVE
TO REVIEW THOSE THINGS TO BE
SURE WE KNOW WHO IS ON FIRST.
JUSTICE LEWIS CALLED ME BY
NAME SO I SKIPPED THAT. I APOLOGIZE.
I'M JOHN CRABTREE.
I'M HERE FOR LARRY LINER.
BEFORE YOU GET INTO THE
PROBLEMS, I'M A LITTLE CONFUSED
ABOUT THE PARAMETERS OF REVIEW
IN A CASE LIKE THIS.
THIS IS A CIVIL STATUTE THAT'S
BEEN DECLARED TO BE
UNCONSTITUTIONALLY VAGUE, WHICH
DOESN'T HAPPEN VERY OFTEN.
WHAT ARE THE PARAMETERS OF
REVIEWING A CIVIL STATUTE THAT
MAY HAVE PENAL ASPECTS IT
FOR VAGUENESS?
IT IS A COMPLICATED QUESTION
GENERICALLY.
THIS CASE IT'S MADE A LITTLE
BIT LESS COMPLEX, UNLIKE MOST
STATUTES THAT WE MIGHT VIEW AS
BEING REMEDIAL, THIS ONE IS

CLEARLY BECAUSE WE HAVE A PURPOSE, THAT IS TO FIX A PAST WRONG.

THIS IS SORT OF REMEDIAL ON STEROIDS --

WHAT DO YOU CALL PENAL?

IT'S REMEDIAL ON STEROIDS. WE HAVE THE LEGISLATURE SAYING NOT ONLY DID THEY ANNOUNCE A PURPOSE BUT THEY ACTUALLY CODIFY THE MANDATE THAT IT BE CONSTRUED IN REMEDIAL FASHION. THEY SAY IT SHALL BE CONSTRUED --

GET REALLY TO THE BOTTOM LINE.

THAT'S WHAT HE IS TALKING ABOUT.

THE FOURTH DISTRICT UTILIZED A CRIMINAL STATUTE AND, SO WE'VE GOT, IN THAT OPINION THEY SAID, YOU KNOW, WOULD WE ALLOW A CRIMINAL STATUTE THAT SAYS, POSSESSION OF DRUGS OVER A REASONABLE AMOUNT IS PENALTY, WOULD WE ALLOW SALE OF DRUGS WITHIN A GEOGRAPHIC AREA OF A CHURCH WITHOUT DEFINITION. THAT IS WHERE THIS IS GOING. DO WE USE THE ANALYSIS FROM THOSE CRIMINAL STATUTES AS, BECAUSE IT IS PENAL IN NATURE. IT'S \$1,000 PER TIME.

IF WE USE THAT ANALYSIS, THAT IS WHERE HE IS GOING, WE ALL NEED TO KNOW OR IS THERE SOME DIFFERENT ANALYSIS IN A CRIMINAL STATUTE THAT WOULD CHARGE SOMEBODY 1,000 BUCKS EACH TIME MAY LEAD TO ONE CONCLUSION? IS WHERE THIS IS GOING?

ANSWER, VERY DIRECTLY ANSWER THIS.

I WILL TRY IT AGAIN.

448.24 LIABILITY PHASE PORTION OF THE ACT.

448.25 IS THE PENALTY PROVISION ARE OR PENALTY STATUTE UNDER THE ACT.

THE PENALTY STATUTE HAS TWO COMPONENTS.

ONE WHICH YOU GET \$1,000.

ALTERNATIVELY YOU GET ACTUAL

DAMAGES.

PRACTICAL MATTER AS THE FOURTH
DCA ACKNOWLEDGED IN ALL OR
ALMOST ALL INSTANCES IT'S GOING
TO BE THE \$1,000.

BUT THEY'RE ACTUALLY DIFFERENT
STATUTES.

IN THIS CASE THE PART THAT IS
BEING CHALLENGED AS TO ITS
CLARITY IS NOT THE PENALTY
PROVISION AT LEAST THE DCA.
THE DCA FOUND THE PENALTY
PROVISION WAS NOT UNDUELY
VAGUE.

THE PROBLEM IS WHETHER OR NOT THE
LIABILITY STATUTE IS UNDULY
VAGUE.

BUT IN TERMS OF INTERPRETING
IT STRICTLY, THAT WOULD BE LIKE
SAYING IN A CRIMINAL STATUTE,
WELL WE'RE ONLY TALKING ABOUT
THE CONDUCT.

WE'RE NOT -- PUNISHMENT IS IN
SEPARATE STATUTE.

THAT TO ME BEGS THE QUESTION.
WHAT HAPPENS AS A RESULT OF A
VIOLATION OF THIS STATUTE IS A
PENAL PROVISION, \$1,000 A DAY.
ARE YOU SAYING THAT IT'S NOT TO
BE CONSTRUED STRICTLY IN TERMS
OF DUE PROCESS CONCERNS?

SO --

I RECOGNIZE THAT THE \$1,000
PROVISION DOES TRIGGER A, IT'S
A DETERRENT AND YOU GOT TO
CONSIDER, IN DUE PROCESS
CONCERNS I AGREE YOU'VE GOT TO
DEAL WITH THAT IN ITS STRICT
APPLICATION --

AN SAY THEY SHOULD BE
CHARGING, YOU KNOW, ONLY A
DOLLAR MAYBE THERE WOULD BE
SOME ISSUE.

WE CAN, YOU KNOW, HAVE THIS,
THESE DONE IN A TRIAL AND
FIGURE OUT WHETHER IT WAS
REASONABLE BUT YOU ARE ASKING
FOR THE STATUTORY DAMAGES.
SO YOU ARE ASKING FOR THE PENAL
PROVISION FOR VIOLATIONS OF 24,
CORRECT?

YES.

WE'RE SEEKING STATUTORY DAMAGES
BUT THE STATUTORY DAMAGE, IF

THIS COURT HYPOTHETICALLY, WERE TO STRIKE THE \$1,000 PENALTY, ON 8th AMENDMENT GROUNDS, WOULD STILL HAVE A LIABILITY ISSUE BECAUSE YOU WOULD STILL HAVE THE REST OF THE STATUTE.

SO UNLIKE IN A NORMAL CRIMINAL CONTEXT WHERE YOU'VE GOT AT VIOLATION HERE AND PENALTY OVER HERE, IN THIS CASE YOU'VE GOT A VIOLATION OVER HERE AND YOU'VE GOT TWO ALTERNATIVE PENALTY.

BUT IF YOU DID THE REVERSE, IF THIS COURT AGREED WITH THE FOURTH THAT THE STATUTE, THE STATUTE, 424 WAS

UNCONSTITUTIONAL, THEN, WOULDN'T NECESSARILY, THE QUESTION AS TO THE \$1,000 BECOMES MOOT, CORRECT?

THAT'S ABSOLUTELY CORRECT, JUSTICE WELLS.

THAT'S TRUE.

THE POINT I WAS TRYING TO MAKE AT THE BEGINNING THIS IS A SLIGHTLY UNUSUAL SITUATION BECAUSE, WELL CERTAINLY DUE PROCESS CONCERNS CAN TRUMP EVERYTHING BECAUSE THE CONSTITUTION TRUMPS STATUTES.

WE DO HAVE THE FLORIDA LEGISLATURE HERE EXPRESSLY MANDATING THAT THE STATUTE BE CONSTRUED TO CARRY OUT ITS EFFECT OF PROTECTING DAY LABORERS.

THAT IS RIGHT AT THE BEGINNING OF THE ACT.

IT SHALL BE CARRIED OUT.

BUT THE PROBLEM COMES IN, WE'RE TALKING ALL AROUND IT IN FLOWERY -- WE'VE GOT TO GET TO THE MEAT AND BONES OF THIS.

IF YOU'RE TALKING ABOUT SOMETHING THAT TALKS IN TERMS OF REASONABLE AMOUNT FOR AWARD OF ATTORNEY FEES IN CIVIL STATUTE THAT IS NOT LIKE A CRIMINAL STATUTE.

IT'S PROBABLY GOING TO BE UP HEALED.

PREVAILING RATES FOR ATTORNEYS, WE USE THESE KIND OF PHRASES.

WE USE IT IN A FAIR TRADE,

WHETHER SOMEBODY IN FOR TREBLE DAMAGES AND ALL THESE THINGS. WE REALLY HAVE TO GET TO THE BOTTOM OF THE FIRST QUESTION, HOW DO WE LOOK AT THIS? AND GEOGRAPHIC AREA, I MEAN WE TALK ABOUT WITH REGARD TO NO FAULT AND GOING TO A DOCTOR. YOU KNOW, SO YOU REALLY GOING TO HAVE TO HIT THE HEART OF THIS PROBLEM TO HE PREVAIL IN THIS CASE.

I UNDERSTAND WHAT YOU'RE SAYING BUT ACTUALLY WHAT WE WOULD SAY, THE STATUTE ITSELF IS CLEAR ENOUGH AND THAT, EVEN IF IT IS STRICTLY CONSTRUED BECAUSE OF ITS DETERRENT COMPONENT, THE \$1,000 SLEDGEHAMMER I THINK THE FOURTH DCA SAID.

EVEN IF WE STRICTLY CONSTRUE ITS APPLICATION AND EVEN IF WE STRICTLY CONSTRUE IT TO DUE PROCESS CONCERNS IT HAS TO BE CONSTRUED TO OBVIOUS EFFECT. IT WOULD BE TO USE HELICOPTER AND LIMOUSINES THAT WOULD BE ABSURD.

THAT WOULD CLEARLY NOT PROTECT DAY LABORERS. THAT IS CLEARLY ITS INTENT.

WHEN WE HAVE CONSTITUTIONAL OVERTONES, DON'T WE RUN INTO TWO CONSTITUTIONAL PRINCIPLES? NUMBER ONE, A STATUTE SHOULD BE INTERPRETED TO AVOID THE CONSTITUTIONAL PROBLEM.

AND NUMBER TWO, WHERE YOU ARE IMPOSING FINES ON SOMEBODY, IT'S A PENAL STATUTE, SHOULD BE INTERPRETED IN LIGHT MOST FAVORABLE TO THE DEFENDANT? AND SO, IF THOSE ARE THE PARAMETERS, SHOULD WE NOT INTERPRET THE TERMS, GEOGRAPHIC AREA, THE TERMS, REASONABLE, OKAY, AS ENCOMPASSING IN THIS CASE, A TRICOUNTY AREA AND IF WE DO THAT, DO WE FIND THAT THE STATUTE IS CONSTITUTIONAL AND THAT THE DEFENDANT DID NOT VIOLATE THE STATUTE IN THIS CASE?

IF YOU CONSTRUE IT TO BE TRICOUNTY AREA, THEN YOU CAN CONSTRUE IT TO BE, THERE TO BE NO VIOLATION.

YOU MIGHT CONSTRUE IT TO BE UNCONSTITUTIONAL.

YOU CANNOT HOWEVER TO CONSTRUE TO BE TRICOUNTY AREA.

LET ME EXPLAIN WHY.

NO MATTER HOW COMPELLING THE CONSTITUTIONAL PRINCIPLES ARE, NO MATTER HOW MUCH THEY REQUIRE YOU TO STRICTLY CONSTRUE THE STATUTE YOU CANNOT IGNORE THE STATUTE'S PLAIN LANGUAGE. ITS ACTUAL TEXT.

IF WE WERE HERE DRAFTING LEGISLATION WE MIGHT DRAFT IT RATHER DIFFERENTLY.

MIGHT DRAFT IT MORE FAVORABLE.

THIS STATUTE LOOKS AT EACH DISCRETE EVENT.

THERE IS NO AVOIDING THAT.

THERE IS NO AMOUNT OF --.

BUT ISN'T EACH DISCRETE EVENT, IF THE PERSON IS PICKED UP AT THE DAY LABOR SITE AND WHERE IS THAT SITE?

THEY'RE PICKED UP AT THE, START AT LABOR HALL.

THEY GO TO THE LABOR HALL.

LOCATED IN WHAT COUNTY?

IN THIS INSTANCE IT'S BROWARD COUNTY.

OKAY, BROWARD COUNTY, BUT IF THE JOB SITE IS IN PALM BEACH COUNTY AND WHY ISN'T THAT, REASONABLE INTERPRETATION AND IF THIS JOB SITE IS IN MIAMI, THAT'S WHY I DON'T UNDERSTAND YOUR ARGUMENT THAT IT JUST HAS TO BE BROWARD.

IF THEY ARE TAKING THEM FROM BROWARD TO MIAMI, OR FROM BROWARD TO PALM BEACH, WHAT'S THE REAL ISSUE HERE?

I CAN RESPOND TO THAT.

IF YOU'RE TAKE THEM TO PALM BEACH, THEN YOU'VE GOT TO DEAL WITH THAT IF YOU'RE DEALING TO MIAMI YOU DEAL WITH THAT BUT WITH THE STATUTE REQUIRES YOU TO DO, IS TO LOOK AT EACH TRANSPORTATION OF THEM.

THAT IS THE LANGUAGE THE
LEGISLATURE USED.

IT MAY HAVE BEEN MUCH --
DOESN'T IT USE THE TERM
WORKSITE?

IT SAYS -- NO. NO LABOR POOL
MAY CHARGE MORE FOR
TRANSPORTATION TO THE WORKSITE.
IT GOES EITHER WAY, COMING OR
GOING.

A DAY LABORER.

IT DOES NOT LOOK MACRO AT DAY
LABOR POOL.

DOES LOOK AT ALL THE LABORERS.
LOOKS AT INDIVIDUAL EACH
TRANSPORTATION FOR EACH
INDIVIDUAL LABORER ON EACH DAY.
THEN BEFORE EACH ONE THERE
MAY BE A DIFFERENT GEOGRAPHIC
AREA?

ABSOLUTELY.

I'M SURE THIS CASE AND
ARGUMENTS REALLY PRESENT THAT
ALMOST SEEMS THOUGH YOU ALL
WERE TRYING TO USE JUST BROWARD
COUNTY RATES FOR EVERYBODY
INVOLVED.

BUT ONLY FOR BROWARD COUNTY
TRANSPORTS.

THAT IS ABSOLUTELY RIGHT.

ALL RIGHT.

IN FACT OUR CLASS DEFINITION
IS ONLY TRANSPORTATION WITHIN
BROWARD COUNTY.

YOU'RE NOT SEEKING DAMAGES
FOR EXAMPLE, FOR LINER'S TRIPS
FROM BROWARD TO PALM BEACH OR
BROWARD TO MIAMI?

ONLY FOR LINER'S TRIPS WITHIN
BROWARD COUNTY?

THAT'S ABSOLUTELY RIGHT.

WE TRIED NOT TO SUE WHERE WE
DIDN'T THINK THERE WAS
VIOLATION.

THAT IS WHAT CLAIMS ARE
SUPPOSED TO DO.

WE'RE TAKEN TO TASK BY THE
FOURTH DCA BECAUSE THEY THOUGHT
WE WEREN'T PLAYING CRICKET.

THE FACT WE LOOKED AT IT, WE
INITIALLY FILED SUIT AND WE HAD
CLAIMS FOR TRANSPORTATION
WITHIN MIAMI-DADE, WITHIN
BROWARD AND WITHIN PALM BEACH

COUNTY BUT WE FOUND OUT THOSE
DIDN'T HOLD WATER.

HERE IS WHAT THE ISSUE
BECOMES THEN.

I THINK THE TRIAL COURT FOUND
OR PERHAPS YOU AGREED AS WELL
THAT THE CHARGES OF 1.50
INTERCOUNTY TRIP WOULD BE
REASONABLE.

WELL, REASONABLENESS IS NOT
THE PRONG WE SUED UNDER.
WE SUED UNDER THE OBJECTIVE --
IT WOULD ALSO BE
COMMENSURATE WITH THE PUBLIC
TRANSPORTATION COUNTY TO
COUNTY.

IT WOULD.

OKAY.

BUT YOUR ARGUMENT IS,
INTRACOUNTY, IN BROWARD IT IS
NOT A COMMENSURATE WITH THE
PUBLIC TRANSPORTATION?

THAT'S ABSOLUTELY RIGHT.

SEEMS TO ME THE DEFENDANT'S
ARGUMENT IS THAT MAY ALL BE
TRUE, BUT WE HAVE TO TAKE OUR
CHARGES GLOBALLY BECAUSE WE
DON'T CHARGE NECESSARILY PER
TRIP.

CHARGE 1.50 WHETHER YOU'RE
GOING TO BROWARD OR PALM BEACH
OR MIAMI AND THEREFORE, WHEN
YOU TAKE EVERYTHING TOGETHER,
IT IS STILL WITHIN THE CHARGES
FOR PUBLIC TRANSPORTATION.

THAT IS -- NOT JUST LIKING
LAW AS IT'S WRITTEN.

THAT IS THEIR PROBLEM.

IT MAY BE SLIGHTLY ONEROUS.
IF THEY WANT TO CHANGE THAT
THEY GO TO THE LEGISLATURE.
THEY COULD HAVE GONE TO THE
LEGISLATURE.

IN FACT THEY DID GO TO THE
LEGISLATURE CHANGE PART OF IT.
THEY COULD HAVE GONE AND SAID,
IT'S GOING TO BE, IT COULD
CHANGE, THE LEGISLATURE SAID
A LABOR POOL MAY NOT CHARGE ITS
EMPLOYEES MORE.

YOU COULD HAVE THE LANGUAGE
OVER A PERIOD OF TIME.

THERE IS LOTS OF WAYS IT COULD
HAVE BEEN DRAFTED MACRO.

BUT THEY DIDN'T.
COULD YOU GO, YOU WERE JUST
ABOUT TO SAY I WANT TO MAKE
SURE YOU DIDN'T SUE BASED ON IT
WAS ORIGINAL AMOUNT?
THAT'S CORRECT, YOUR HONOR.
TELL ME WHAT YOU SUED BASED
ON.
LOOK AT THE LANGUAGE OF THE
STATUTE.
THE FIRST PART PROHIBITION
AGAINST CHARGING IN EXCESS
OF A REASONABLE AMOUNT.
THEN THE LEGISLATURE CAME
BEHIND THAT AND SAID, WITH A
FAIL-SAFE.
BUT IN NO EVENT MAY YOU CHARGE
MORE THAN THE PREVAILING RATE
FOR PUBLIC TRANSPORTATION IN
THE GEOGRAPHIC AREA.
RIGHT.
SO, THEREFORE, AND MAYBE AGAIN,
THIS IS SORT OF LIKE TRYING TO
MAKE SURE WE'RE ALL ON THE SAME
PAGE, FOURTH DISTRICT'S FOCUS
ON REASONABLE AMOUNT IS VAGUE,
DOESN'T HAVE ANYTHING TO DO
WITH YOUR CASE?
NONE WHATSOEVER, YOUR HONOR.
IT DID NOT IN OUR COMPLAINT.
DID NOT IN OUR BRIEFING.
IT SIMPLY WAS, MISPLACED.
AND --
WE DISCUSSED PUBLIC
TRANSPORTATION?
ABSOLUTELY.
WE DID.
AND WE WENT INTO THAT PRONG.
THE PUBLIC TRANSPORTATION
OBJECTIVE PRONG IS THE
LEGISLATURE'S DETERMINATION OF
AN OUTER LIMIT OF WHAT IS
REASONABLE.
THROUGH A SCENARIO HERE IN
TERMS OF, LET'S SAY THAT YOU
HAVE THE ORGANIZATION AND THEY
NEED TO TRANSFER WORKERS AT
6:00 IN THE MORNING AND THEY
HAVE TO HAVE THEM AT A LOCATION
AT 6:30 IN ORDER FOR THE
CONTRACTOR OR THE EMPLOYER OR,
WHOEVER NEEDS THE LABOR.
AND SO IS THERE A BURDEN THEN
ON YOUR PART TO DEMONSTRATE

THAT AT 6:00 IN THE MORNING,
THAT THERE'S A BUS STOP NEAR
THE LOCATION WHERE THEY ALL
GATHER, THAT WILL GET THEM TO
THE, FOR INSTANCE, A FARM FIELD
TO PICK OR SOMETHING, AT 6:30?
IS THAT PART OF THE BURDEN
HERE?

THAT YOU HAVE TO DEMONSTRATE
THE AVAILABILITY OF PUBLIC
TRANSPORTATION THAT WILL MEET
THE REQUIREMENTS OF WHAT HAS
BEEN CONTRACTED TO DO.

ABSOLUTELY NOT, YOUR HONOR.
HERE'S WHY.

SO WHY NOT?

BECAUSE THE LEGISLATURE
DIDN'T SAY THAT.

THE LEGISLATURE SAID SOMETHING
FAR BROADER.

IT SAID, THE FIRST PART OF THE
STATUTE, LOOK AT THE LANGUAGE,
IT LOOKS AT TRANSPORTATION TO
THE SITE.

BUT IT USES SAME LANGUAGE IN
THE SECOND CLAUSE.

IN THE SECOND CLAUSE, THEY WENT
TO OBJECTIVE EXTERNAL STANDARD,
A PROXY FOR WHAT WAS
OBJECTIONLY REASONABLE.

PUBLIC TRANSPORTATION IN THE
GEOGRAPHIC AREA.

THEY COULD HAVE SAID, GALLON OF
GAS OR PORTION THEREOF OR COULD
HAVE USED ANYTHING ELSE THAT
REASONABLY CORRELATED PRICE OF
TRANSPORTATION.

BUT ON THE ONE HAND YOU WANT
TO EXCLUDE THE SECOND CLAUSE
FOR ONE PURPOSE BUT APPLY IT
FOR DEFINING FIRST PROVISION.

NO, WE ONLY RELY ON THE
SECOND CLAUSE, YOUR HONOR.

I THOUGHT YOU SAID YOU WERE
SUING UNDER REASONABLE RATE
CLAUSE.

NO, YOUR HONOR.

ONLY SUING UNDER OBJECTIVE
STANDARD.

NOT USING REASONABLE RATE.

I APOLOGIZE.

BUT ISN'T THE QUESTION IS,
ARE, YOU'RE SAYING THEY'RE TWO
DIFFERENT STANDARDS.

THE FOURTH DISTRICT SEEMED TO SAY, TWO DIFFERENT WAYS TO FIND A VIOLATION OF THE STATUTE?

THEY ARE.

ONE IS SUBJECTIVE, ONE IS OBJECTIVE.

THEY'RE NOT SAME THING.

PUBLIC TRANSPORTATION AVAILABLE, TO GET PEOPLE FROM LOCATION A, TO THE LOCATION THAT IS NECESSARY, WHICH IS LOCATION B.

WHICH, YOU KNOW, MAY BE, WAY OUT IN THE WESTERN PART, YOU KNOW, BROWARD OR PALM BEACH COUNTY OR WHATEVER.

THERE IS NO PUBLIC TRANSPORTATION AVAILABLE.

AND SO WHAT HAPPENS IN THAT, IN OTHER WORDS, WE'VE GOT SOMEBODY THAT IS TRYING TO SUPERVISE

THIS OUTFIT AND TRYING TO

ENFORCE THIS STATUTE. SO THEY

SAY TO THEMSELVES, I'M GOING TO

GET ON TO THESE PEOPLE BECAUSE

I THINK THEY'RE PRICE GOUGE THE

WORKERS AND BUT I'VE GOT TO BE

PREPARED TO PRESENT MY CASE NOW

AND SO WHAT WOULD THEY DO?

WELL, I THINK THE ANSWER TO

THAT, AGAIN YOU GO BACK TO THE

PLAIN TEXT OF THE STATUTE.

IF YOU LOOK THE PLAIN LANGUAGE

OF THE STATUTE AND YOU DON'T

TREAT ANY LANGUAGE AS

SURPLUSAGE YOU'VE GOT TO GIVE

MEANING TO THE WORD GEOGRAPHIC.

BECAUSE THE LEGISLATURE SIMPLY

SAID IN THE AREA --

WHAT I'M ASKING YOU AS A

PRACTICAL MATTER, WHAT DO YOU

DO?

DO YOU GET A BUS SCHEDULE AND

SAY, JUDGE, NOW WE REALIZE THE

BUSES DON'T START UNTIL 6:30 IN

THE MORNING AND SO THERE'S NO

PUBLIC TRANSPORTATION AVAILABLE

EARLIER THAN 6:30.

AND WE ALSO REALIZE THAT THE

CLOSEST THAT THE BUS COMES TO

THE DESTINATION IS FIVE MILES,

AND, IT TAKES AN HOUR AND A

HALF TO GET FROM 6:30 TO,

WHATEVER AND SO, TELL ME HOW

THE CASE IS PROVEN NOW BECAUSE
WHAT WE END UP WITH, THAT WILL
GET THEM THERE AT NOON.
THAT IS NOT WHAT THE
LEGISLATURE REQUIRES THOUGH.
WHAT THE LEGISLATURE REQUIRES
IS YOU LOOK AT THE PREVAILING
RATE FOR PUBLIC TRANSPORTATION
IN THE GEOGRAPHIC AREA AS A
PROXY.

IT DOESN'T MATTER.

THEY COULD HAVE USED THE RATE
FOR, YOU KNOW, SOMETHING ELSE
BUT --

ANSWER HIS DIRECT QUESTION.
HOW PRACTICALLY DOES IT WORK?
HE DOESN'T NEED A
DISSERTATION.

WHAT DO YOU TAKE TO THE HEARING,
TO PROVE THE CASE? JUST, --
ALL YOU TAKE TO THE HEARING
WOULD BE WHAT, TAKE EVIDENCE OF
WHAT THE MOST COMMON OR
FREQUENT RATE FOR PUBLIC
TRANSPORTATION IN THE
GEOGRAPHIC AREA.

I'M SAYING ON THE GROUND,
WHAT WOULD YOU TAKE?
WOULD YOU TAKE A BUS SCHEDULE?
WOULD YOU TAKE A TAXI FARE
SITUATION?

WOULD YOU TAKE A CAR CHARTER?
WHAT WOULD YOU TAKE TO THE
HEARING TO PROVE YOUR CASE?
I'D HAVE TO PROVE WAS MOST
COMMON OR FREQUENT.

I DON'T WANT TO HEAR WORDS
MOST COMMON.

I WANT TO HEAR WHAT.

IN BROWARD WE USE THE BUS.

WE KNOW THE BCT --

EVEN THOUGH THE BUS DOESN'T
GO TO WHERE THEY'RE GOING?
ABSOLUTELY ARE.

STATUTE DOESN'T REQUIRE THAT.
NOTHING IN THE STATUTE REMOTELY
SUGGESTS YOU GO SITE TO SITE OR
AT MAIN TIMES.

OBJECTIVE PROXY.

THE IDEA WE SHOULD INDULGE IS
SITE TO SITE COMPARISON IS
OUTSIDE THE STATUTE.
JUSTICE CANTERO HAS A
QUESTION.

SEEMS TO ME IF YOU APPLY PUBLIC TRANSPORTATION AS LET'S SAY A BUS, WHICH MAY BE CORRECT, MAY BE INTERPRETATION OF PUBLIC TRANSPORTATION, THE COST OF PUBLIC TRANSPORTATION IS VIRTUALLY ALWAYS GOING TO EXCEED A REASONABLE RATE BECAUSE BY DEFINITION, THE PUBLIC RATE IS BELOW MARKET BECAUSE IT IS SUBSIDIZED BY THE COUNTY.

AND SO YOU WOULD RARELY EVER INTERPRET THE TERM REASONABLE RATE BECAUSE IT WOULD ALWAYS BE ABOVE THE PUBLIC TRANSPORTATION RATE.

THAT MAY BE, THAT MAY BE SO AND THAT MIGHT BE OUR DETERMINATION AGAIN IF WE WERE MAKING LEGISLATION BUT 1995 THE FLORIDA LEGISLATURE DECIDED THIS IS WHAT THEY'RE GOING TO SAY.

IT CAN'T BE MORE THAN THE REASONABLE RATE.

IN ANY EVENT IT CAN'T BE MORE THAN PUBLIC TRANSPORTATION. IT MIGHT BE IN OUR OPINION MORE THAN REASONABLE OR LESS THAN REASONABLE AMOUNT OF PUBLIC TRANSPORTATION RATES BUT THAT'S WHAT THE LEGISLATURE DID.

THE FOURTH DCA DID NOT INTERPRET OR RENDER UNCONSTITUTIONAL SECTION 25? NO, THEY DID NOT.

THE ISSUES THERE ARE NOT ADDRESSED IN THE OPINION, AND OBVIOUSLY THE GORE DECISION AND BMW DECISION IN THE SUPREME COURT.

PUNITIVE DAMAGE DECISIONS WE DON'T KNOW EXACTLY WHAT THE SUPREME COURT OF UNITED STATES TODAY WOULD DO WITH THIS ISSUE BUT THIS IS STATUTORY CONTEXT. WE SUGGEST IT'S DIFFERENT FOR THE REASONS IN OUR BRIEF.

YOU'RE MOVING RIGHT THROUGH, BEFORE YOU SIT DOWN, NEED A DIRECT ANSWER FROM YOU. ABSOLUTELY.

THAT GOES BACK TO VERY FIRST

QUESTION.

I'M NOT SURE WE HEARD A DIRECT ANSWER.

OKAY.

DO YOU APPLY THE SAME STANDARDS IN CASE IN EVALUATING THESE YOU WOULD IN A CRIMINAL STATUTE AS JUDGE BROCH IN OPINION BELOW.

YOU WOULD NOT USE THE SAME STANDARDS IN THIS CASE.

AND WHY?

TWO REASONS, ONE, THREE.

AT LEAST TWO REASONS.

ONE THAT THE LEGISLATURE EXPRESSLY MANDATED THAT IT BE CONSTRUED TO CARRY OUT ITS EFFECT.

SO I THINK THAT ONE PART.

THE OTHER PART IS YOU HAVE TWO DIFFERENT STATUTES AND THE REMEDY IS NECESSARILY GOING TO BE \$1,000.

FOR EXAMPLE, IF THE \$1,000 PROVISION WERE STRUCK YOU ONLY HAVE ACTUAL DAMAGES.

BECAUSE THEY ARE DISCRETE, WE WOULD SUGGEST THERE HAS GOT TO BE HYBRID ANALYSIS HERE.

IT SLIGHTLY COMPLEX QUESTION.

WE DO RECOGNIZE THAT IT'S PUNITIVE ON THE \$1,000 PRONG.

IT HAS TO BE STRICTLY CONSTRUED AS APPLICATION.

THIRD BASIS.

YOU SAID THERE ARE THREE REASONS.

YOU GAVE ME TWO.

ONE WAS THE LEGISLATURE SAID SO.

RIGHT.

TWO WAS THAT THEY ARE SEPARATE.

RIGHT.

AND THREE IS THAT WITHIN THE SEPARATE STATUTE IT IS POSSIBILITY OF NOT BEING \$1,000.

IT COULD JUST BE ACTUAL DAMAGES.

BUT ON THAT, IF YOU AS APPLIED, SINCE YOU'RE SEEKING \$1,000, IF YOU WERE ONLY SEEKING A SMALLER AMOUNT, IT

SEEMS TO ME THAT YOU CANNOT BE SEEKING SOMETHING YOU ADMIT IS PENAL AND THEN SHOULDN'T SAY THE STATUTE SHOULD BE STRICTLY CONSTRUED AND SEMINAL PRINCIPLES ABOUT VAGUENESS COME INTO PLAY?

WELL I THINK THE CRIMINAL CONCERNS ABOUT VAGUENESS DO COME INTO EFFECT IN APPLICATION OF THE \$1,000 PENALTY.

THERE IS NO WAY OF GETTING AROUND THAT.

THERE REALLY ISN'T, BUT WHAT I'M SAYING IS IT COULD BE STRUCK AND WE WOULD THEN BE ENTITLED FALL BACK TO THE ACTUAL DAMAGES.

AND THE POINT OF THAT IT BUTTRESSES THE SEPARATION OF 448.24 AND 448.25.

IF IT'S NOT LIKE IN CRIMINAL CONTEXT WHERE ALWAYS NECESSARILY FLOWS.

THAT'S MY POINT.

OKAY.

IT IS A COMPLEX QUESTION.

OKAY.

RESPONSE?

MAY IT PLEASE THE COURT.

TODD PITTENGER ON BEHALF OF THE APPELLEE, WORKERS TEMPORARY SERVICES.

IN RESPONSE TO THE JUDGE'S QUESTION ON THE STANDARD, WE WOULD SUGGEST THE FOURTH DCA AND TRIAL COURT DID APPLY THE CORRECT STANDARD FROM BROWN v. STATE IT IS IN THE STAPLE IN CONTEXT BECAUSE OF THE PUNITIVE ASPECT OF THE STATUTE AND THERE ARE EXAMPLES IN THIS COURT'S CASE LAW, ABA INDUSTRIES CASE WHERE ANNEXATION WAS CONTEXT AND QUESTION WHETHER PREDOMINANTLY OPENED WAS VAGUE OR NOT.

THAT WAS CIVIL CONTEXT YET THE VAGUENESS STANDARD WOULD STILL APPLY.

THE DIFFERENCE AS YOU WELL KNOW IS WHETHER STRICT SCRUTINY IS APPLIED OR NOT.

IT IS THE PUNITIVE ASPECT OF THIS STATUTE, THE STATUTORY

HAMMER IS WHAT THE FOURTH DISTRICT CALLED IT, THE, TRIAL JUDGE REFERED TO THE PUNITIVE ASPECTS OF THE STATUTE.

THE RATIO.

LET ME ASK YOU THIS

QUESTION.

THE OPPOSITION SAID OKAY, I'M GOING TO ACCEPT AS TO THE PENAL AND SAYS THAT PART CAN BE SEVERED FROM THE REST OF THE STATUTE.

IS THAT INCORRECT OR TELL US YOUR VIEW WITH REGARD TO THAT ASPECT.

WE DO NOT AGREE THEY CAN BE SEVERED BECAUSE IT IS THE SERIOUSNESS OF THE PUNITIVE SANCTION HERE THAT IMPLICATES THE VAGUENESS CONCERN AND MAKES IT MUCH MORE HEIGHTENED.

IF WE WERE TALKING ABOUT MUCH LESSER SANCTION IT WOULD BE HELD TO LESSER STANDARD.

THAT'S WHAT I THINK HE IS ARGUING THAT OKAY, I'M ALMOST, I THINK THAT'S WHAT THEY'RE SAYING THAT, OKAY AS TO THAT PART BUT THAT PART, IF SOMEONE SAYS, THIS IS UNCONSTITUTIONALLY VAGUE WITH REGARD TO IMPROPOSING A PENALTY.

DOES IT NECESSARILY FOLLOW THOUGH THAT IF YOU STRIKE THAT YOU HAVE TO SAY THIS IS UNNECESSARILY VAGUE AS A REMEDIAL STATUTE UPON STRIKING THE PENALTY ASPECT?

WE WOULD SUGGEST THE STATUTE WOULD STILL HAVE TO BE STRICKEN FOR TWO REASONS.

OKAY.

ONE, THE REASONABLE AMOUNT REFERENCE WHICH HAS NOTHING TO DO WITH STATUTORY DAMAGE THAT THE COURT JUST REFERS TO, IS UNCONSTITUTIONALLY VAGUE.

WHAT DO YOU DO WITH THE STATUTE, CIVIL STATUTES THAT TALK ABOUT REASONABLE ATTORNEYS FEES?

THE CONCEPT OF REASONABLENESS IS THROUGHOUT, SPRINKLED ALL

OVER OUR STATUTES.
AND OUR CONSTITUTION.
THAT IS TRUE, YOUR HONOR BUT
IN THE CONTEXT OF THIS STATUTE,
NO LABOR POOL SHALL CHARGE A
DAY LABORER A REASONABLE AMOUNT
TO TRANSPORT A WORKER TO OR
FROM THE DESIGNATED
WORKSITE.

WOULD REQUIRE FOR EVERY DAY
LABORER CASE ON EVERY SINGLE
WORKSITE TO DETERMINE A
REASONABLE AMOUNT.

THEY'RE SAYING THEY DIDN'T
EVEN GO ON THE REASONABLE
AMOUNT.

THEY'RE GOING ON PREVAILING
RATE, THE GEOGRAPHIC AREA FOR
PUBLIC TRANSTATION.

WHAT'S VAGUE ABOUT THAT?
THAT IS A PRETTY, I MEAN, YOU
KNOW, WE'RE NOT, WE'RE TALKING
ABOUT AN EVIL WHICH THE
LEGISLATURE WANTED TO ELIMINATE
WHICH ASSUME IS THAT THESE
LABOR POOLS WERE TAKING
ADVANTAGE OF POOR PEOPLE BY
GOUGING THEM ON CHARGING MORE
THAN THEY SHOULD HAVE FOR
TRANSPORTING THEM TO PLACE.

SO LET'S JUST, IN TERMS OF
WHAT'S GOING ON HERE.

I LOOK AT THIS A, OWNER OF A
DAY LABOR POOL, AND I GO, I
CAN'T CHARGE THEM MORE THAN
WHATEVER THE PUBLIC
TRANSPORTATION WOULD BE TO AND
FROM.

SO I LOOK AND I, GET MY BUS
SCHEDULES OUT AND I TAKE CARE
OF IT.

AND THEN HOPEFULLY I CAN
SUCCESSFULLY DEFEND MYSELF BUT
BY SAYING I HAVE CHARGED A
PROPER RATE.

NOT SURE, I DON'T KNOW, YOU
KNOW, OTHER THAN SAYING AN
AMOUNT, WHICH THEY HAVE NOW
DONE, BUT THAT CAN VARY FROM
YEAR TO YEAR GOING TO HAVE TO
KEEP ON CHANGING THAT MAYBE
UPWARD FOR, YOU KNOW, YOUR
BENEFIT.

THAT SEEMS TO ME PRETTY, BETTER

THAN REASONABLE ATTORNEYS FEES.
IT SEEMS PRETTY, PRETTY
OBJECTIVE.

YOUR HONOR, WITH ALL DUE
RESPECT, LOOKING FROM THE
VAGUENESS STANDPOINT, YOU LOOK
AT IT FROM THE STANDPOINT LIKE
YOU SAID OF THE LABOR POOL
COMPANY, TRYING TO CONFORM ITS
STANDARD TO THE LAW.

WHAT IS SO HARD ABOUT THAT?
THAT'S WHAT I'M TRYING TO
UNDERSTAND.

IT'S NOT THEY'RE GOING, GEE,
HOW AM I TO FIGURE OUT HOW TO
CHARGE A REASONABLE AMOUNT.
IT SAYS, THAT THEY LOOK AT THE
PREVAILING RATE FOR PUBLIC
TRANSPORTATION.

WELL, GEE, SHOULD I USE BUS OR
SHOULD I USE, YOU KNOW,
LIMOUSINE.

WELL, YOU KNOW, PRESUMABLY, IF
THEY WENT THROUGH AND MADE A
GOOD-FAITH EFFORT, THEN, THEY
CAN SUCCESSFULLY DEFEND THEY
HAVEN'T EXCEEDED DAILY RATE FOR
PUBLIC TRANSPORTATION TO THE
DESIGNATED WORKSITE.

IF THEY SIMPLY SAY, I'M GOING
TO SAY \$6 IS REASONABLE AMOUNT,
THIS CAN'T BE CHALLENGED THEN
IT'S A DIFFERENT SITUATION.

SSO, YOU KNOW, FRANKLY ALTHOUGH
I APPRECIATE THAT MAYBE
REASONABLE AMOUNT OUT OF
CONTEXT COULD BE VAGUE, I DON'T
SEE HOW IN THE CONTEXT OF THIS
STATUTE AND WHAT YOU HAD TO
LOOK AT, IT'S VERY DIFFICULT TO
FIGURE OUT THAT YOU'RE NOT PUT
ON NOTICE, OF, WHAT YOU WERE
SUPPOSED TO DO, WEREN'T
SUPPOSED TO GOUGE YOUR PEOPLE
WORKING FOR YOU.

JUDGE, THERE WAS NO EVIDENCE
PRESENTED A TRIAL THERE WAS ANY
GOUGING HERE.

\$1.50 --

MAYBE YOU'RE GOING TO WIN
ON, I DON'T KNOW, IS THIS ISSUE
WE HOLD THIS CONSTITUTIONAL
THEY WIN OR IS THERE SOME
DETERMINATION THAT HAS TO BE

MADE?
PROBLEM TRIAL COURT FACED
WAS FIRST IN CONSTRUING THE
STATUTE.
WITH WE DISAGREE TOTALLY WITH
OPPOSING COUNSEL THERE ARE TWO
CLAUSES IN THIS STATUTE.
THERE ARE NOT.
STATUTE MUST BE CONSTRUED.
THE MEANING TO AND FROM THE
DESIGNATED IN FIRST SITE IN THE
FIRST CLAUSE DESCRIBE WHAT IS
THE AMOUNT IS THAT CAN'T EXCEED
THE PREVAILING RATE FOR PUBLIC
TRANSPORTATION IN THE
GEOGRAPHIC AREA.
THOSE TWO ARE LINKED.
PROBLEM AS ONE OF THE OTHER
JUSTICES SAID WE PUT ON
UNREBUTTED EVIDENCE, 60% OF THE
WORK SITES BY MR. LINER COULD
NOT BE REACHED WHICH BUS.
THIS STATUTE IS INTENDED TO
ESTABLISH UNIFORM STANDARD
THROUGHOUT THE STATE IS WHAT
44.21 SAYS.
WE HAVE 67 COUNTIES IN THIS
STATE.
MAJORITY WITHOUT ESTABLISHED
BUS SYSTEMS.
IF THE MOST URBAN SETTING THAT
WE HAVE IN THIS STATE HAS 60%
NOT SERVICED BY THE BUS, IT IS
WITH ALL DUE RESPECT NOT
INTUITIVE AND NOT AUTOMATIC
FROM THE LABOR POOL STANDPOINT
THAT YOU WOULD LOOK TO THE
BECAUSE THE BUS DOES NOT GET
THE WORKER TO AND FROM THE
DESIGNATED WORKSITE.
DOESN'T THAT MEAN THOUGH,
THEY MIGHT NOT BE ABLE TO
SUCCESSFULLY PROSECUTE A CLAIM,
YOU KNOW WHERE THERE IS NO
PUBLIC TRANSPORTATION
AVAILABLE?
BUT WHAT IS WRONG WITH THE
REASONABLENESS IN TERMS OF YOU
KNOW, WHY COULDN'T YOU BRING IN
FOR INSTANCE, THE MANAGER OF A
CAB COMPANY WHO SAYS LOOK, YOU
KNOW, WE HAVE A VEHICLE, AND,
WE GET DEPRECIATION ON THE
VEHICLE.

WE HAVE TO PAY A DRIVER OKAY.
GAS HAS GONE THROUGH THE ROOF.
AND WE HAVE TO, YOU KNOW,
CHARGE FOR GAS.

AND THEN WE WANT A LITTLE BIT
OF PROFIT.

AND THEREFORE, WE BELIEVE WE
CAN DEFEND OUR CHARGE AS BEING
EXTREMELY REASONABLE, THAT IS
THAT, IN REALITY THEY COULDN'T
EVEN GET TRANSPORTATION OUT
THERE, MUCH LESS GET IT FOR THE
REASONABLE PRICE THAT WE
CHARGE?

SO WHY CAN'T, IN OTHER WORDS,
PEOPLE EVERY DAY FIGURE OUT IF
THEY'RE GOING TO USE A VEHICLE
IN THEIR BUSINESS, WHETHER IT'S
A TRUCK, OR A TAXICAB OR A
LIMOUSINE OR WHATEVER.

HOW TO COMPUTE A REASONABLE
CHARGE OUT OF THAT.

THERE MAY BE SOME RANGE.
BUT WHY ISN'T THAT A DOABLE
THING?

JUDGE, WE DID EXACT EXACTLY
WHAT YOU DESCRIBE.

YOU'RE EXACTLY RIGHT.

WE PUT ON THAT CASE IN TRIAL
THESE DAYS OVER JUDGE CARNEY.
WE DID NOT NO WHETHER THE
CONSTITUTIONAL ISSUE WOULD BE
RULED AND HE RULED IN FAVOR ON
THAT ISSUE AS WELL.

WHAT DID HE RULE?

HE FOUND IN THE LAST PART OF
HIS ORDER EVEN IF THE STATUTE
IS FOUND CONSTITUTIONAL, THAT
LARRY LINER STILL LOSES BECAUSE
THE GEOGRAPHIC AREA AS
ESTABLISHED BY THE EVIDENCE WAS
TRICOUNTY.

WE FRAMED PART OF THE ISSUES IN
THIS CASE, IT WASN'T JUST
THEIR PLEADING.

WE HAD A COUNTERCLAIM THAT WAS
ALSO TRIED.

OUR COUNTERCLAIM SAID WE
BELIEVE WE OUR CONDUCT WAS IN
CONFORMANCE WITH THE LAW.

WE ALSO CHALLENGED
CONSTITUTIONALITY IN OUR ANSWER
WE RAISED AND UNDISPUTED,
MR. LINER WENT TO 245 WORK

SITES.

57 OF THOSE WERE IN MIAMI-DADE
OR PALM BEACH.

ONLY 177 WERE BROWARD.

WHY DID YOU DECIDE THE
CONSTITUTIONAL ISSUE THEN IF IT
COULD BE DECIDED ON A FACTUAL
BASIS?

THAT IS, I'M AWARE OF THE
PRECEPT.

THAT IS EXCELLENT POINT.
WE WOULD SUGGEST THAT AFTER
WORKING WITH THIS THROUGH THE
TRIAL, THE TRIAL JUDGE HAD NO
REAL OPTION BUT TO FIND IT
UNCONSTITUTIONAL BECAUSE IT IS
UNCONSTITUTIONALLY VAGUE IN
TERMS OF HOW IT WORK.

WHY, IF HE FOUND THAT YOU
HAD PROVEN UP THAT YOUR CHARGES
WERE REASONABLE, WHY NOT JUST
STOP RIGHT THERE.

WE WERE CONTENDING WITH THE
FACT THE PLAINTIFF'S, APPELLANTS
HERE WERE ATTEMPTING TO GET WAY
FROM REASONABLE ISSUE.

THEY KEPT SAYING IT WAS NOT
PART OF IT.

WE INTRODUCED EVIDENCE.
THERE WERE MOTIONS IN LIMINE
WERE DENIED.

IN THE END
IN TERMS OF FACTUAL RECORD
CREATED BEFORE HIM.

IF THIS STATUTE IS DECLARED
UNCONSTITUTIONAL, YOUR
CLIENT IN ESSENCE WOULD GET TO
CHARGE WHATEVER THEY WANT TO
FOR THIS TRANSPORTATION?

\$1.50 IS THE STATUTORY
MAXIMUM HERE.

THAT'S NOW.

IF WE'RE TALKING ABOUT OLD
STATUTE, WE'RE NOT EVEN
CONSIDERING THE CHANGE.
YOUR CLIENTS COULD HAVE THEN
CHARGED ANYTHING?

IT WAS PUT IN THE RECORD SO
IT'S UNDISPUTED HERE WE NEVER
CHARGED ANYTHING OTHER THAN
1.50.

WE'RE ONLY TALKING ABOUT THIS
WINDOW OF TIME IN THE PAST
WHERE THE OLD STATUTE WAS IN

EFFECT.
SINCE JULY 2006 THE RULE HAS
BEEN 1.50.
IT WOULDN'T ENABLE US TO DO
ANYTHING DIFFERENT.
DID THE JUDGE MAKE FACTUAL
FINDING ON BASIS OF THIS RECORD
WHAT A REASONABLE AMOUNT WAS?
THE JUDGE DID NOT DO THAT.
HE DID NOT.
HE SAID ACTUALLY IN HIS
FINDINGS, WE CHARGED OUR RATE
WAS LESS THAN INTERCOUNTY
TRAVEL.
WAS LESS THAN PALM BEACH
TRAVEL.
LESS THAN MIAMI-DADE TRAVEL.
THAT IS NOT THE QUESTION.
I'M REALLY STRUGGLING WHY
ANYONE WOULD USE A
TRANSPORTATION COST FROM POINT
A, TO A POINT B THAT'S NOT PART
OF THE DISPUTE?
WHY WOULD WE LOOK TO WHAT IT
COST TO GO FROM A TO B IF
THAT'S NOT WHERE THE PERSON WAS
GOING?
IF IT THE PERSON WAS GOING TO
C, THAT'S WHERE THE CLAIM IS,
IT'S ONLY WITHIN, FOR THOSE
TRANSPORTS WITHIN THE COUNTY,
THAT IT'S EXCESSIVE, HOW DO
WE GET TO JUST, WE COULD SAY,
WELL, GEOGRAPHIC AREA IS
FLORIDA.
THAT'S WHAT I'M MISSING.
DO WE GET YOU HAVE TO LOOK AT
WHAT IT IS IN MIAMI WHEN, AS I
UNDERSTAND IT, THE CLAIM IN
THIS CASE IS FOR TRANSPORTS
WITHIN BROWARD COUNTY?
THEY STARTED SUING FOR THREE
COUNTIES.
BUT THAT'S OUT OF IT.
THEY MISSED THAT.
THREE MONTHS BEFORE THE
TRIAL THEY AMENDED THEIR
COMPLAINT.
SO THAT'S OUT.
NOW WE'RE TALKING ABOUT JUST IN
BROWARD.
BUT OUR, WHAT THE CASE WE
PRESENT AND AND WHAT THE TRIAL
COURT ACCEPTED AND FOURTH DCA

DID AS WELL WAS THE GEOGRAPHIC AREA -- THE LEGISLATURE KNOWS THAT THE WORD COUNTY EXISTS. THEY COULD HAVE USED THE WORD COUNTY.

THAT'S THE REASON.

JUST BECAUSE THAT PHRASE, YOU COULD LOOK ALL GEOGRAPHIC AREA DOWN TO KEY WEST THEN.

IT WOULD ONLY BE GEOGRAPHIC AREA THAT LABOR HALL SERVICED.

IT'S WHAT THEY SERVICE

WHEREVER THEIR ROUTES MAY BE.

AND COINCIDENTALLY HERE

WHERE LARRY LINER WORKED.

UNREFUTED EVIDENCE --

WAS NOT MAKING A CLAIM WHEN

YOU TRANSPORTED HIM TO DADE.

WHAT THAT GETS TO AS JUDGE

CARNEY AT THE TRIAL COURT

CHARACTERIZED IT WAS CHERRY-PICKING

THE CLAIM.

WHAT YOU'RE SAYING YOU DON'T

LOOK WHAT HE IS ACTUALLY

CLAIMING FOR THOSE TRANSPORTS

WITHIN; YOU LOOK WHETHER THIS

IS GENERALLY REASONABLE FEE IN

THIS WHOLE AREA WHERE THEY DO

BUSINESS?

YES, YOUR HONOR.

OKAY.

SECONDLY HOW DID WE GET TO

LIMOUSINES AND DISCUSSION OF

LIMOUSINES OUT OF PUBLIC

TRANSPORT?

THEY HAVE, WITH ALL DUE

RESPECT TO THE APPELLANT,

GROSSLY TAKEN JUDGE CARNEY'S

COMMENTS IN THE ORDER OUT OF

CONTEXT.

THE EVIDENCE PRESENTED IN THE

STATUTES WE JUDICIARY NOTICED

WORDS PUBLIC TRANSPORTATION

DEFINED MULTIPLE TIMES IN OTHER

FLORIDA STATUTES CITED IN OUR

BRIEF TO INCLUDE A VERY BROAD

RANGE OF THINGS EVEN GO SO FAR

AS TAXI CABS.

YOU'RE NOT SUGGESTING LIMOS?

NO.

YOU'RE NOT SUGGESTING THIS

IS TALKING ABOUT PERSONAL,

PRIVATE CAR TRANSPORT, IT'S

TALKING ABOUT --

NO.

-- WHAT IS COMMONLY UNDERSTOOD AS PUBLIC TRANSPORTATION. PUBLIC TRANSPORTATION BUT BROADER THAN BUS.

WHAT ELSE IS THERE IN SOUTH FLORIDA?

DOWN THERE WE HAVE THE TRI-RAIL.

TRI-RAIL.

THERE IS PARATRANSIT.

DO YOU HAVE A JITNEY SERVICE, LITTLE BUSES?

WE PUT ON EVIDENCE AT TRIAL ABOUT A VAN POOL PROGRAM THAT ALSO QUALIFIED AS PUBLIC TRANSPORTATION.

THE COST OF THAT EXCEED WHAT HAD WE CHARGED.

BASICALLY EVERYTHING --

I NO HE THAT IN DADE COUNTY THE COUNTY OFFERS A PARATRANSIT WHERE SOMEBODY WILL COME DOOR-TO-DOOR, PICK UP PEOPLE AND, TAKE THEM FOR \$3 WHEREVER THEY WANT.

IT'S A SUBSIDIZED.

THERE IS ALSO, PLACES LIKE JUSTICE ANSTEAD SAYING A JITNEY TAKES CASES ALL OVER THE PLACE.

ARE YOU ARGUING THAT TRANSPORTATION INCLUDES MORE THAN BUS, LESS THAN LIMOUSINES? IT INCLUDES LIMOUSINES OUT OF THE PICTURE.

IT INCLUDES DEFINITELY MORE THAN BUSES.

THE PROMISE, WITH THIS STATUTE INsofar VAGUENESS IS CONCERNED IS PUBLIC TRANSPORTATION IS NOT DEFINED.

IF THAT LABOR HALL COMPANY WANTED TO CONFORM ITS CONDUCT TO THE LAW WHERE YOU START FOR VAGUENESS PURPOSES, IF THEY LOOKED TO THOSE OTHER STATUTES THEY WOULD FIND VERY BROAD DEFINITIONS.

NOTHING --

IF YOU GO BACK TO THIS, LOGICAL, GO AND SAY WE START WITH PUBLIC TRANSPORTATION.

MOST PEOPLE THINK BUS.

BUS, TRAIN.

YOU DON'T THINK PUBLIC
TRANSPORTATION, LIMOUSINE.
SO IN TERMS OF WHAT'S
REASONABLE YOU GO, WELL IF
THERE IS NO BUS SERVICE, TO
PLACES, THEN, YOU MIGHT HAVE TO
OTHER THINGS BUT, THAT'S A
HYPOTHETICAL SITUATION.
SO NOW WE'RE TALKING ABOUT
WHETHER THIS IS
UNCONSTITUTIONAL ON ITS FACE.
OR WHETHER IT IS
UNCONSTITUTIONAL AS APPLIED.
RIGHT NOW BECAUSE JUDGE CARNEY
FOUND THAT THE GEOGRAPHIC AREA
WAS THE TRICOUNTY AREA, HE SAID
THERE WAS NO VIOLATION.
BUT IF WE SAY, WE DON'T THINK
THIS IS NECESSARILY
UNCONSTITUTIONAL ON ITS FACE,
BECAUSE THERE ARE PARAMETERS,
IT COULD BE UNCONSTITUTIONAL AS
APPLIED BUT, IN THIS SITUATION,
WE DON'T AGREE THAT GEOGRAPHIC
AREA MEANS TRICOUNTY.
IT MEANS, YOU KNOW, HERE,
BROWARD COUNTY.
IT MIGHT MEAN SOMETHING
DIFFERENT UP IN JUSTICE BELL'S
NECK OF THE WOOD I DON'T KNOW
HOW THEY GET AROUND THERE.
HORSE AND BUGGY I THINK.
WE INCLUDE ALABAMA TOO.
AND THEN IT GOES BACK WITH
THAT AND MAYBE, THEN, IF THEY
START TO USE SOMETHING THAT IS
UNREASONABLE AND YOU SAY THIS,
IS HOW WE DID IT AND IT LOOKED
REASONABLE AND STILL YOU WERE
FOUND TO BE LIABLE, MAYBE YOU
WOULD HAVE ANOTHER BASIS FOR
MAKING THIS CLAIM.
BUT I THINK THAT TO ME IS
PREMATURE.
WHY ISN'T THAT THE BETTER WAY
TO APPROACH IT THAT IS, SAY,
IT'S NOT UNCONSTITUTIONAL ON
ITS FACE?
IT COULD BE UNCONSTITUTIONAL AS
APPLIED, BUT WE DON'T SEE
ANYTHING THAT JUMPS OUT AT US
RIGHT NOW THAT MAKES IT
UNCONSTITUTIONAL AS APPLIED
HOWEVER WE DON'T AGREE THE

GEOGRAPHIC AREA HAS TO MEAN FOR THIS CASE THE TRICOUNTY IF THERE ARE ONLY TRANSPORTING IN BROWARD AND LET IT GO BACK AND SEE WHAT, YOU KNOW, HOW IT FALLS?

JUDGE, WE PRESENTED AT THE TRIAL AND AT APPELLATE CHALLENGE. AGAIN WE DIDN'T KNOW FACIALLY IT WOULD COME OUT THE WAY IT DID.

SO THERE WAS FULLY DIRECTED, FULLY DEVELOPED TRIAL RECORD TO ESTABLISH AS APPLIED TO US THE STATUTE FROM OUR STANDPOINT IS UNCONSTITUTIONAL.

THE RECORDS THERE, WOULDN'T HAVE TO BE ANYTHING FURTHER DONE.

THE REFERENCE TO CABS AND LIMOS YOU MENTIONED AT BEGINNING OF YOUR QUESTION, I MEAN THE KEY TO THAT THE LYNCHPIN FROM OUR STANDPOINT IN ANALYSIS OF THIS STATUTE IS TO AND FROM DESIGNATED WORKSITE. YOU CANNOT DIVORCE THAT.

TAXICAB WILL GET YOU THERE. VAN POOL WILL GET YOU THERE. IT'S DOOR-TO-DOOR.

IN CONTEXT 60% OF THE WORK SITES IN THIS VERY URBAN COUNTY EVIDENCE WAS UNREFUTED IT DOESN'T GET, THE BUS DOESN'T GET THERE.

JUST NEEDS COMMON SENSE TO ME WHAT THE STATUTE IS TRYING TO ACHIEVE IN YOUR LINE OF BUSINESS, YOUR THEY HAVE TO COME TO THIS CENTRAL SITE TO BE COMMONLY TRANSPORTED TO THE JOB SITE CORRECT?

YES.

SO WHAT THE INTENT IS, IF THAT WERE NOT REQUIREMENT. IF THAT WORKER HAD TO FIND TRANSPORTATION TO THAT JOB SITE WHAT WOULD IT REASONABLY COST FOR YOU NOT TO CHARGE MORE THAN THAT?

RIGHT, BY ALL MEASURES BASED ON THE RECORD THERE WE CHARGED FAR LESS.

UNREFUTED EVIDENCE WAS WE LOST

\$40,000 A YEAR IN TRANSPORTING WORKERS.

WE ONLY RECOVERED 2,000 AND CHANGE THE FIRST.

4,000 THE SECOND YEAR.

\$300 THE THIRD YEAR DURING HIS 2-YEAR PERIOD.

I GUESS I DON'T KNOW WHY IS IT, AGAIN, WHY DIDN'T JUDGE CARNEY MAKE ALTERNATIVE FINDING EVEN IF IT WAS TRICOUNTY AREA, EVEN IF LIMITED TO BROWARD, IT WAS WOULD STILL BE THAT YOU CHARGED, THAT YOU DID CHARGE A REASONABLE MANNER?

THE PROBLEM JUDGE CARNEY WAS FACED WITH, LIKE THE APPELLANT IS DOING TODAY.

THEY ARE TRYING TO SUGGEST THERE ARE TWO DIFFERENT CLAUSES IN THE STATUTE.

THEY'RE NOT ARGUING REASONABLE AMOUNT.

I WOULD SUGGEST THEY CONCEDED WE CHARGED REASONABLE AMOUNT BUT THEY MAY NOT AGREE WITH THAT CONCESSION.

SO JUDGE CARNEY WAS LEFT WITH DEALING WITH THE LANGUAGE OF THIS PART OF THE STATUTE THAT TRIAL WAS MOSTLY ABOUT BUT IN NO EVENT SHALL THE AMOUNT AMOUNT, THE AMOUNT TO TRANSPORT THE WORKER TO AND FROM THE DESIGNATED WORKSITE SHALL EXCEED THE PREVEILING RATE FOR PUBLIC TRANSPORTATION IN THE GEE AREA.

HE HAD TO WRESTLE WITH ALL THOSE TERMS.

THAT SAYS THE SECOND CLAUSE DEFINES CAN YOU CHARGE MORE THAN THE PUBLIC TRANSPORTATION TO AND FROM THE DESIGNATED AREA?

YOU AGREE WITH THAT?

YES.

THEY ARE RELATED.

THE AMOUNT IS TO AND FROM THE DESIGNATED WORKSITE.

SO IF YOU CHARGE MORE THAN THE PUBLIC COST OF THE PUBLIC TRANSPORTATION, WOULD YOU BE VIOLATING STATUTE EVEN THOUGH

IT WAS A REASONABLE AMOUNT FROM
YOUR POINT OF VIEW WHERE YOU
COULD MAKE A PROFIT?

NOT IF THE BUS DOESN'T GET
YOU THERE.

BECAUSE THEN THE BUS IS NOT
COMPARABLE MEANS OF PUBLICS
TRANSPORTATION.

WHAT YOU'RE SAYING IN THIS
CASE, WE'RE TALKING ABOUT
BROWARD COUNTY.

WAS THERE TESTIMONY THAT
MR. LINER WAS GOING WAS NOT
COVERED BY --

YES, UNREBUTTED TESTIMONY.
60% OF THE WORK SITES.

WHAT WAS EVIDENCE PUT ON AS
TO OTHER METHODS OF PUBLIC
TRANSPORTATION WITHIN THE
COUNTY OTHER THAN BUS?
OUR TRANSPORTATION EXPERT
TESTIFIED.

WE ALSO HAD MOLLY HUES THE
DIRECTOR AFTER VAN POOL PROGRAM
WITH TRICOUNTY AREA.

THAT TESTIMONY WAS ALL OF
RECORD.

WHAT WERE THE CHARGES?
THE VAN POOL BROKE DOWN WHEN
YOU DIVIDED DO THE MOST BENEFIT
OF THE DOUBT HOW MANY
PASSENGERS IN THE VAN, ROUGHLY
\$6, IN THE 5 TO \$6 RANGE.
IS PRIVATE OR PUBLICLY
OWNED?

IT'S PUBLICLY SUBSIDIZED.
GIVING CREDIT FOR ALL PUBLIC
SUBSIDIES.

WHY DIDN'T THE JUDGE SAY,
PUBLIC TRANSPORTATION IS
DEFINED NOT ONLY INCLUDING
BUS BUT A VAN POOL AND
THESE CHARGES ARE A,
REASONABLE, AND B, NOT MORE
THAN THE PUBLIC TRANSPORTATION
AVAILABLE TO GO
DOOR TO DOOR

WHICH WOULD NOT BE A BUS, IT
WOULD BE A VAN POOL?

THE JUDGE, THE JUDGE DID NOT
GO SO FAR AND WE DIDN'T URGE
HIM TO GO SO FAR AS TO TRY TO
SET PREVAILING RATE FOR THE
COUNTY OR FOR THE GEOGRAPHIC

AREA OR FOR ANYTHING.
ONCE HE HAD CONCLUDED STATUTE
WAS UNWORKABLE AND
UNCONSTITUTIONAL IT REALLY
WOULD HAVE BEEN NOT CONDUCIVE
WITH THAT TO MAKE THAT RATE
SETTING.

PLUS IT WAS OUR SUGGESTION TO
HIM, AND WE DO MAINTAIN IT'S
NOT BURDEN OF LABOR HALLS TO GO
SETTING RATES HERE FOR
EVERYBODY UNDER ALL
CIRCUMSTANCES.

BECAUSE THE LEGISLATURE USED TO
AND FROM THE DESIGNATED
WORKSITE THEY CREATED SITUATION
WHERE IT'S VIRTUALLY IMPOSSIBLE
TO SET A PREVAILING RATE.

THIS WAS ON THE BOOKS FROM
1995?

YES, YOUR HONOR.

THIS IS THE FIRST CASE THAT
EVER WAS BROUGHT UNDER IT.

IT IS THE FIRST.

FIRST TIME ALL THESE YEARS,
WHO KNOWS WHAT WAS GOING ON,
SOMEONE TRIES TO YOU KNOW,
BRING IN A LABOR POOL TO BE A
ACCOUNTABLE AND NOW THEY RAISE
CONSTITUTIONAL GROUNDS.

THAT IS FOR CHARGING \$1.50.

LOSING \$40,000 OVER TWO YEARS.
PER YEAR.

AND WE WOULD SUGGEST THERE
WAS NO EXTORTION.

THERE WAS NO FINDING IN ANY
SORT OF ABUSE OF LABORERS IN
THIS CONTEXT.

THAT RECORD WAS NOT CREATED
HERE.

WE LOST MONEY ON TRANSPORTATION
AND EGREGIOUS PUNITIVE EFFECT
OF THIS STATUTORY HAMMER.

50 CENTS TO 1,000.

I DON'T KNOW.

SEEM TO ME AS FACT-FINDER YOU
PRESENTED EVIDENCE THAT SHOWS
THAT IT WAS FIRST OF ALL YOU
KNEW HOW TO DEFEND THIS CASE.
YOU KNEW HOW TO ESTABLISH WHAT
WAS PREVAILING RATE.

AND YOU DID THAT.

THAT'S WHAT YOU'RE REELING
TELLING US.

NOT THAT YOU DIDN'T KNOW WHAT A REASONABLE RATE WAS BECAUSE YOU KNEW HOW, YOU UNDERSTOOD WHAT THE STATUTE SAID AND YOU ABIDED BY IT.

WELL, RESPECTFULLY THE PROBLEM WITH THE STATUTE IS IT DOESN'T CREATE THE GUIDEPOST THAT THE LEGISLATURE IS SUPPOSED TO DO.

WHERE IS THE CLEAR AND DEFINITE WARNING WHAT THE CONDUCT PROHIBITED IS?

BY NOT TELLING US GEOGRAPHIC AREA WE'RE LEFT TO GUESS WHETHER THE GEOGRAPHIC AREA WHERE WE SERVICE, WHERE HE GOES OR SOME COMBINATION OF THE TWO.

BY NOT DEFINING WHAT PUBLIC TRANSPORTATION IS --

WHAT SHE IS GETTING BACK TO, DO YOU HAVE TO HAVE AS APPLIED TO YOU, UNDER THESE CIRCUMSTANCES YOU'VE PROVED EVERYTHING, THERE IS NO CONSTITUTIONAL VIOLATION.

THE WINNER.

AND YET WE'VE GOT A STATUTE DECLARED UNCONSTITUTIONAL. THERE IS SOMETHING WRONG WITH THIS PICK YOU ARE.

THE WAY YOU DESCRIBE IT YOU WIN ON EVERY ISSUE.

WHAT THE EVIDENCE IS.

AND YET WE'RE FACED WITH DECLARING STATUTES UNCONSTITUTIONAL.

BUT WE WOULD BE SUBJECTIVE AS WOULD ENTIRE LABOR POOL INDUSTRY HAPPENING AGAIN AND AGAIN AND AGAIN.

THAT IS THE SIN, WITH ALL DUE RESPECT OF A VAGUE STATUTE. BY NOT HAVING CLEAR GUIDEPOSTS THESE REASONABLENESS TRIALS WOULD BE ENDLESS.

EVERY DAY LABORER SUING, MERE THREAT OF THAT WOULD CREATE PUNITIVE EFFECT.

JUSTICE WELLS HAS A QUESTION.

I ASSUME THAT, YOUR POSITION IS THAT EVEN THOUGH YOU AS, JUSTICE PARIENTE SAID PROVEN

YOU DONE EVERYTHING YOU COULD DO, YOU LOST \$40,000 CLAIM THERE IS CLAIM BEING MADE YOU SHOULD HAVE ONLY CHARGED A DOLLAR, RIGHT?

50% OVERCHARGE EACH WAY AND SO A DOLLAR.

THE CLAIM I DID THAT BECAUSE YOU USED WRONG GEOGRAPHICAL AREA.

CORRECT.

WAS THAT THE BASIS OF THE ARGUMENT?

THEY ARGUED IT'S GOT TO BE THE BROWARD COUNTY BUS IS THE ONLY MEASURE.

SO THEY HAVE A MICRO APPROACH TO THE CASE WHICH IS YOU PUT ANY DOUBT ABOUT GRAPHIC AREA OUT OF THE PICTURE.

ANY DOUBT ABOUT WHAT PUBLIC TRANSPORTATION MEANS OUT OF THE PICTURE.

ANY DOUBT ABOUT PREVAILING RATE.

IT MUST BE THE BROWARD COUNTY BUS FARE.

JUDGE CARNEY CORRECTLY OBSERVED IN HIS JUDGMENT THAT IS ONLY THEORY WHICH THEY COULD WIN. THAT'S IT.

BUT HAS THE 2006 AMENDMENT TO THE STATUTE RESOLVED THIS PROBLEM?

GOING FORWARD.

BUT NOT RETROACTIVELY FOR THIS PERIOD WE'RE DEALING WITH.

WE'RE GRATEFUL THAT THE LEGISLATURE FIXED IT FROM JULY 2006 FORWARD BUT THIS SUIT RELATES TO A PERIOD PRIOR TO THAT.

BUT THIS IS THE ONLY SUIT?

THE RECORD REFLECTS THERE WERE SOME TEN, ALMOST TEN OTHER CASES IN BROWARD COUNTY BROUGHT.

ALL THESE CLASS ACTIONS AGAINST OTHER LABOR POOL COMPANIES ALL SEEKING TO ESSENTIALLY PUT THE ENTIRE INDUSTRY OUT OF BUSINESS OVER THIS EVENTUALTY WE HAVE HERE AND THOSE CASES ARE ALL STAYED AS A RESULT OF THE

CONSTITUTIONALITY RULING. IF THE COURT WOULD UNDO THAT, THAT WOULD RESURRECT PENDING CASES. WHETHER THE EXACT NUMBER IS EIGHT OR TEN BUT IT'S IN THE RECORD.

YOU SAID AS I KNOW WE'RE UP ON TIME BUT YOU SAID THERE WERE LAWSUITS BROUGHT AN EFFORT TO PUT THESE LABOR POOLS OUT OF BUSINESS? IS THAT ON THE RECORD? ABSOLUTELY, YOUR HONOR.

WE PUT ON A RECORD FROM OUR CFO FROM OUR CEO AND FROM THE FINANCIAL RECORDS ABOUT THE DEVASTATING EFFECT.

THAT WASN'T THEIR, YOU'RE SAYING IT WAS THEIR INTENT TO PUT YOU OUT OF BUSINESS?

IT'S CONSEQUENCE.

I MAY HAVE MISSPOKE.

IS THE PUNITIVE CONSEQUENCE OF WHAT THEY HAVE DONE.

MR. LINER'S DAMAGES ALONE WOULD TAKE 17% OF OTHER NET INCOME FOR THE ENTIRE STATEWIDE COMPANY.

AND WE PUT ON EVIDENCE THERE IS 1500 LABOR POOL PEOPLE LIKE HIM COMING OUT OF THAT BROWARD COUNTY LABOR HALL EACH YEAR WHO WOULD ALL HAVE CLAIMS LIKE HIS. 177,000.

AND THERE IS 22,000 PEOPLE WE HAVE STATEWIDE.

THOSE KIND OF NUMBERS WHEN OUR NET INCOME AS IN THE RECORD WAS ONLY A MILLION DOLLARS WOULD ENTIRELY DESTROY OUR COMPANY, EVEN IF A CLASS WASN'T CERTIFIED.

IN THIS CASE WE GOT TO REMEMBER WAS BROUGHT AS A CLASS ACTION. WOULDN'T YOU AGREE THAT IF THE FOURTH DISTRICT'S OPINION IS AFFIRMED, THAT THE ISSUE AS TO THE CONSTITUTIONALITY OF SECTION 25 IS MOOT?

YES.

YES, YOU'VE GONE WELL BEYOND YOUR TIME.

THANK YOU, JUDGE.

GIVE YOU A COUPLE MINUTES.

YOU'RE ALSO OVER YOUR TIME.

BALANCE THE TIME OUT.

I APPRECIATE IT.

CAN YOU SPEAK TO THIS ISSUE
OF THE DEFINITION OF PUBLIC
TRANSPORTATION.

IT SEEMS LIKE YOU WANT TO US
DEFINE IT AS BUS SERVICE BUT, I
THINK YOU WOULD AGREE AT LEAST
THE COURT FOUND THAT BUS
SERVICE, ISN'T GOING GOING TO
GET YOU EVERYWHERE.

AT LEAST AT 60% OF THE TIME
IT'S NOT GOING TO GET YOU
DOOR-TO-DOOR.

AND THE STATUTE ITSELF SAYS, TO
AND FROM THE WORKSITE.

SO WHY CAN'T WE USE A MEASURE
OF OTHER METHODS OF PUBLICLY
SUBSIDIZE TRANSPORTATION, NOT
INCLUDING TAXIS LIMOS ANYTHING
LIKE THAT.

BECAUSE THE STATUTE, THIS IS
WHERE YOU'VE BEEN SLIGHTLY WITH
ALL DUE RESPECT MISLED.

STATUTE DOES NOT SAY TO AND
FROM THE WORKSITE.

IF YOU LOOK AT THE STATUTE
BEFORE YOU AND YOU LOOK AT
LANGUAGE IT TALKS ABOUT THE
CHARGE THAT THE EMPLOYER
IMPOSES TO AND FROM THE
WORKSITE AND THEN IF YOU LOOK
AT THE NEXT CLAUSE --

WHICH IS WHAT HE SAID.

TO AND FROM THE WORKSITE.

THAT'S THE CHARGE FROM THE
EMPLOYER.

BUT IF YOU LOOK AT NEXT CLAUSE,
WHAT IS IT COMPARED TO, NOT
COMPARED TO AND FROM WORKSITE
THAT IS OF CRITICAL IMPORTANCE.

BECAUSE IF YOU DO BELIEVE THAT
THE STATUTE IS LOOKING AT, WHAT
PUBLIC TRANSPORTATION WOULD
CHARGE TO AND FROM, I REALIZE
JUSTICE BELL THAT IS JUST GOOD
COMMON SENSE.

IT IS.

IF I ACCEPT YOUR ARGUMENT
AND THE BUS IS 25 CENTS, FROM
POINT A TO POINT B, BUT THIS
DISTANCE IS MUCH BROADER, THEN,
IF WE ACCEPT YOUR ARGUMENT, 25
CENTS IS ALL THIS PERSON COULD

CHARGE?

IF THAT'S WHAT LEGISLATURE SAID, THAT'S WHAT IT DID HERE THAT IS TRUE.

I REALIZE THAT MIGHT BE BAD LEGISLATION AND THERE WOULD BE A DIFFERENT CONSTITUTIONAL ATTACK IF THAT WERE, IF WE WANT TO GO DOWN THAT PATH.

BUT THAT'S NOT WHAT THE LEGISLATURE SAID.

WHAT STATUTORY DEFINITION OF PUBLIC TRANSPORTATION SUPPORTS YOUR POSITION?

YOUR HONOR, I WOULD ADMIT THE TRANSPORTATION WOULD INCLUDE BUSES, AND TRAINS AND MAYBE, ALTHOUGH WE DEBATED THIS, MAYBE EVEN A VAN POOL ALL THEIR EXPERTS SAID A VAN POOL WOULDN'T WORK.

THE PROBLEM IS THE LANGUAGE PREVAILING.

BECAUSE, YOU CANNOT EXCISE THAT LANGUAGE FROM YOUR ANALYSIS. YOU CANNOT READ THE TERMS APART IT SAYS THE PREVAILING RATE FOR PUBLIC TRANSPORTATION IN BROWARD COUNTY AND UNFORTUNATELY PROBABLY JUST ABOUT EVERYWHERE IN FLORIDA THAT IS GOING TO BE THE BUS. THAT'S WHY JUSTICE, WHY SENATOR JONES SAID WE'RE LOOKING AT BUS.

MAYBE SOMEWHERE IT WON'T BE A BUS.

MAYBE TROLLEY IN SMALL MUNICIPALITY.

WHAT DOES THE LEGISLATION SAY NOW?

THE LEGISLATION NOW SAYS 1.50.

THIS JUST APPLIES TO THIS LIMITED CIRCUMSTANCE? THIS SPECIES OF CASES PENDING IN BROWARD AND ONE OTHER SECOND DCA BUT YOU CAN'T IGNORE THE WORDS PREVAILING RATE.

IF IT SIMPLY SAID THE RATE FOR PUBLIC TRANSPORTATION THERE MIGHT ABETTER ARGUMENT.

IT'S GOT TO BE THE ONE THAT IS PREDOMINANT.

134 MILLION BUSES, TRIPS THAT
ARE DONE IN BROWARD.
HAVE TO BE PREDOMINANT FOR A
TYPE OF PUBLIC TRANSPORTATION
THAT WOULD GET YOU
DOOR-TO-DOOR.
BUT THE STATUTE DOESN'T SAY
TO DOOR PUBLIC TRANSPORTATION T
DOES NOT SAY THAT IF THEY
WANTED TO THEY COULD HAVE TAKEN
OFF THE LAST FOUR WORDS OF THE
STATUTE AND NOT SAID, IN THE
GEOGRAPHIC AREA.
THEY COULD HAVE CUT RIGHT
THERE.
BUT YOU SPOKE TO PURPOSE.
ISN'T IT REASONABLE TO ASSUME
THE PURPOSE OF THE LEGISLATURE
IS TO MAKE SURE THAT THESE
PRIVATE POOLS DO NOT CHARGE
THESE LABORERS ANYMORE THAN IT
WOULD COST THEM OTHERWISE IF
THEY CHOSE TO USE PUBLIC
TRANSPORTATION TO GET TO THE
JOB SITE?
NO.
THERE IS NOTHING --
ISN'T THAT REASONABLE.
THAT WOULD BE REASONABLE
THAT WOULD BE A GREAT LAW.
BUT THAT'S NOT WHAT THEY SAID.
WHAT THEY SAID, WAS --
TAKE IT EASY.
THEY SAID, THIS IS THE
BACKSTOP.
THAT'S WHAT THEY SAID.
IT WOULD BE A GREAT LAW TO SAY
PUBLIC TRANSPORTATION FOR THE
SAME TRANSPORTATION.
BUT THEY DIDN'T SAY THAT.
THEY SAID, LOOK OUTSIDE PUBLIC
TRANSPORTATION.
WE APPRECIATE YOUR PASSION
BUT --
THANK YOU VERY MUCH.
WE WANT TO MAKE SURE YOU GET
DOWN THE STEPS OKAY.
THANK YOU BOTH FOR YOUR
ARGUMENTS.
WE'LL TAKE THE CASE UNDER
ADVISEMENT.
THANK YOU, SIR.